

COUNTY OF LOS ANGELES  
DEPARTMENT OF PARKS AND RECREATION



March 15, 2005

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**APPROVE AMENDMENT NUMBER 1 TO  
CONCESSION AGREEMENT NUMBER 72432  
WITH HOTUBS, INC. FOR THE OPERATION OF THE COMMUNITY SPA CENTER  
AT FRANK G. BONELLI REGIONAL COUNTY PARK  
(Fifth District – Three Vote Matter)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed project is categorically exempt from the California Environmental Quality Act (CEQA) according to the sections of the State CEQA Guidelines and classes of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, cited herein.
2. Approve and instruct the Chair to sign the attached Amendment Number 1 to Concession Agreement Number 72432 between the County and Hotubs, Inc., for the operation of the community spa concession at Frank G. Bonelli Regional County Park, effective upon the date of your Board's action.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On September 14, 1999, your Board approved a concession agreement with Hotubs, Inc. for the operation of the community spa concession at Frank G. Bonelli Regional County Park for a term of fifteen (15) years, effective April 1, 2000. The agreement includes a requirement for Hotubs, Inc. to construct a 1,500 square foot community building, five (5) deluxe spas and a restroom/dressing room building by March 31, 2005.

Hotubs, Inc. has completed construction of the five deluxe spas and restroom/dressing room building. However they have since determined that construction of the 1,500 square foot community building is not economically feasible at this time. Hotubs, Inc. has requested, and the Department concurs, that this requirement and payment of a utility offset of two (2) percent of monthly gross receipts should be deleted from the

concession agreement. In return Hotubs, Inc. has agreed to install a separate electric meter by June 30, 2005, and assume full responsibility for all electric costs associated with the concession.

The Department estimates that the monthly cost of electricity exceeds the two (2) percent of total monthly gross receipts Hotubs, Inc. currently pays the County to offset their utility costs. Therefore, while elimination of the utility offset will result in a reduction in revenue of approximately \$24,000 per year, it is estimated that the County's electricity expense will also decrease approximately \$48,000 per year. Hotubs, Inc. will continue payment of the utility offset until they assume full responsibility for electric charges, or no later than June 30, 2005, whichever is earlier.

#### Implementation of Strategic Plan Goals

The proposed Amendment 1 with Hotubs, Inc. will further the Board-approved County Strategic Plan Goal 3, Organizational Excellence, through the continued use of an experienced community spa operator to provide spa facilities for use by park patrons. It will also further Goal 4, Fiscal Responsibility, through the elimination of County costs associated with electricity use at the community spa.

#### **FISCAL IMPACT/FINANCING**

This action will reduce concession revenue by approximately \$24,000 per year and reduce County costs for electricity by approximately \$48,000 per year, for an estimated net savings of \$24,000 to the Department's operating budget annually.

#### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Amendment 1 deletes the concessionaire's requirement to construct the community building and pay a utility offset. In return the concessionaire will install a separate electric meter and assume responsibility for all electric costs by June 30, 2005. Additionally, the Amendment incorporates policy language implemented by your Board subsequent to approval of the Agreement on September 14, 1999. There are ten (10) years remaining on the term of the Agreement, with no options available.

Hotubs, Inc. has executed the attached Amendment and County Counsel has approved the Amendment as to form.

The Honorable Board of Supervisors  
March 15, 2005  
Page 3

### **ENVIRONMENTAL DOCUMENTATION**

This proposed project is categorically exempt from the California Environmental Quality Act (CEQA) according to Section 15303 of the State CEQA Guidelines and Class 3 of the Environmental Document Reporting Procedures and Guidelines adopted by your Board on November 17, 1987, because the project provides for the installation of small new equipment (an electric meter).

### **IMPACT ON CURRENT SERVICES**

The proposed Amendment will allow the long-term community spa concessionaire to continue providing services to the public.

### **CONCLUSION**

It is requested that a certified copy of the action taken by your Board and a fully executed copy of the amendment be mailed to Hotubs, Inc. Attention: Ms. Mary Perkins, 1777 Camper View Road, San Dimas, California 91773. It is also requested that one (1) conformed copy be forwarded to the Assessor and four (4) conformed copies be forwarded to this Department.

Respectfully submitted,

  
Russ Guiney  
Director

MM:tls

c: Executive Officer (22)

AMENDMENT NUMBER 1 TO AGREEMENT 72432  
CONCESSION AGREEMENT FOR THE OPERATION  
OF A COMMUNITY SPA AT  
FRANK G. BONELLI REGIONAL COUNTY PARK

THIS FIRST AMENDMENT TO THE CONCESSION AGREEMENT FOR THE OPERATION OF A COMMUNITY SPA AT FRANK G. BONELLI REGIONAL COUNTY PARK is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005

BY AND BETWEEN

COUNTY OF LOS ANGELES  
a body corporate and politic,  
hereinafter referred to as  
"County"

AND

HOTUBS, INC.  
hereinafter referred to as  
"Concessionaire"

**WITNESSETH:**

WHEREAS, on September 14, 1999 the County entered into an Agreement Number 72432 with Concessionaire for the operation of a community spa at Frank G. Bonelli Regional County Park, which requires the Concessionaire to construct a multi-purpose building by March 31, 2005; and

WHEREAS, the Concessionaire and has determined it is not economically feasible to complete the required constructed within the prescribed timeframe and requested relief from this contractual requirement in return for assuming responsibility for the full cost of electricity used by the facility; and

WHEREAS, This Amendment contains the various contract provisions approved by the Board of Supervisors and additional language to the Agreement;

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

**1. REQUIRED CONSTRUCTION**

Subsection 6.01 is removed in its entirety and replaced with:

Concessionaire shall 1) construct a restroom; and 2) construct and add five (5) deluxe spas, as specified in Exhibit C as attached herein. All construction, identified in Exhibit C, shall be completed within five (5) years of the commencement of this Agreement as described in Section 3 (Term) herein.

**2. CONSIDERATION**

Section 4, **CONSIDERATION**, Subsection 4.01.01 is amended to delete "2 % of the total monthly gross receipts (to be used to offset Utility costs)" upon assumption of the electricity costs by the Concessionaire.

**3. OPERATING RESPONSIBILITIES**

Subsection 10.10, Utilities is removed in its entirety and replaced with:

Concessionaire shall provide and pay for any necessary utilities serving the demised premises, except County shall pay for all water. County shall pay for all electricity until June 30, 2005, or the installation of a separate electric meter(s) by the Concessionaire, whichever date comes first. The telephone number shall be placed in the name of the Concessionaire and shall not be transferred to any other location. Concessionaire waives any and all claims against County for compensation for loss or damage caused by a defect, deficiency or impairment of any utility system, water system, water supply system, drainage system, waste system, heating or gas system, electrical apparatus or wires serving the concession premises. County shall be discharged from the obligation to pay for water upon installation by Concessionaire utilities lines and meter for providing water to concession premises that is separate and apart from lines and meters providing water to the park.

**4. GAIN/GROW**

Add paragraph 43 as follows:

**43. GAIN/GROW**

Should the concessionaire require additional or replacement personnel after the effective date of this Agreement, the Concessionaire shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunities for Work (GROW) Program who meet the Concessionaire's minimum qualifications for the open position. For this purpose, consideration shall mean that the Concessionaire will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Concessionaire.

**5. INDEMNIFICATION**

The existing Paragraph 12 of the Agreement entitled "HOLD HARMLESS AND INDEMNIFICATION" is deleted in its entirety and the following paragraph is substituted:

**"12. INDEMNIFICATION"**

12.01 Concessionaire agrees to indemnify, defend and hold harmless County, its Special Districts, and the County of Los Angeles Flood Control District, their agents, officers, and employees from and against any and all liability, including but not limited to, demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Concessionaire's acts and/or omissions arising from and/or related to this Agreement. Concessionaire's duty to indemnify the County, its Special Districts, and the County of Los Angeles Flood Control District shall survive the expiration or termination of this Agreement."

**6. INSURANCE**

The existing Paragraph 13 of the Agreement entitled "INSURANCE" is deleted in its entirety and the following paragraph is substituted:

## **"13 INSURANCE**

### **13.1 INSURANCE REQUIREMENTS**

Without limiting the Concessionaire's indemnification of the County and during the term of this Agreement, the Concessionaire shall provide and maintain at its own expense, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Agreement. Such insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating of not less than A:VII, unless otherwise approved by the County. Further, all such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County and, with the exception of Worker's Compensation insurance, shall name the County of Los Angeles, its Special Districts, and the County of Los Angeles Flood Control District as additional insureds:

#### **13.1.2 Evidence of Insurance:**

Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to the Department of Parks and Recreation, Attention: Contract Services Division, 433 South Vermont Avenue, Los Angeles, California 90020, prior to commencing services under this Agreement. Such certificates or other evidence shall:

- a. Specifically identify this Agreement.
- b. Clearly evidence all coverage's required in this Agreement.
- c. Contain the express condition that County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
- d. Include copies of the additional insured endorsement to the commercial general liability policy, adding the

County of Los Angeles, its Special Districts, and the County of Los Angeles Flood Control District, its officials, officers and employees as insureds for all activities arising from this Agreement.

- e. Identify any deductibles or self-insured retentions for County's approval. The County retains the right to require Concessionaire to reduce or eliminate such deductibles or self-insured retentions as they apply to County, or, require Concessionaire to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

#### **13.1.3 Notification of Incidents, Claims or Suits**

Lessee shall report to County:

- a. Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against Concessionaire and/or County. Such report shall be made in writing within twenty-four (24) hours of occurrence.
- b. Any third party claim or lawsuit filed against Concessionaire arising from or related to services performed by Concessionaire under this Agreement.
- c. Any injury to a Concessionaire employee which occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County contract manager.



- d. Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Concessionaire under the terms of this Agreement.

13.1.4 **Insurance Coverage Requirements for Subcontractors**

Concessionaire shall ensure any and all subcontractors performing services under this Agreement meet the insurance requirements of this Agreement by either:

- a. Lessee providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. County retains the right to obtain copies of evidence of subcontractor insurance coverage at all times.

**13.2 INSURANCE COVERAGE REQUIREMENTS**

13.2.1 Lessee shall provide and maintain, throughout the term of this Agreement, the following programs and amounts of insurance:

- a. **General Liability:** Insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate:	\$2,000,000
Products/Completed Operations Aggregate:	\$1,000,000
Personal and Advertising Injury:	\$1,000,000
Each Occurrence:	\$1,000,000
- b. **Automobile Liability:** Insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence. Such insurance shall

include coverage for all "owned" "non-owned and hired" vehicles, or coverage for "any auto."

c. **Workers Compensation and Employer's Liability:**

Insurance providing workers compensation benefits, as required by Labor Code of the State of California, or any other state, and for which the Concessionaire is responsible. If Concessionaire's employees will be engaged in maritime employment, coverage shall be provide worker's compensation benefits as required by the U.S. Long shore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Concessionaire is responsible. In all cases, such insurance shall also include Employer's Liability coverage for all persons providing services on behalf of the Concessionaire and for all risk to such persons under this Agreement with limits of not less than the following:

Each Accident: \$1,000,000

Disease – policy limit: \$1,000,000

Disease – each employee: \$1,000,000

d. **Property Coverage:** Such insurance shall be endorsed naming the County of Los Angeles as loss payee, provide deductibles of no greater than five percent (5%) of property value, and shall include:

- i. **Personal Property: Automobile and Mobile Equipment** – Special form ("all risk") coverage for actual cash value of County-owned or leased property; and
- ii. **Real Property and All Other Personal Property** – Special form ("all risk") coverage

for the full replacement value of County-owned or leased property.

**13.2.2 Failure to Procure Insurance**

- a. Failure by Concessionaire to procure or maintain the required insurance, or to provide evidence of insurance coverage acceptable to the County, shall constitute a material breach of the agreement upon which County may immediately terminate or suspend this Agreement. County, at its sole option, may obtain damages from Concessionaire resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Concessionaire. Concessionaire shall be liable for all costs associated with the County's purchase of said insurance.
- b. Notwithstanding the above and in the event that Concessionaire fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Concessionaire shall pay full compensation for all costs incurred by County."

**7. CONCESSIONAIRE RESPONSIBILITY AND DEBARMENT**

Add paragraph 44 as follows:

**"44. CONCESSIONAIRE RESPONSIBILITY AND DEBARMENT**

- 44.01 A responsible Concessionaire is a Concessionaire who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the County's policy to conduct business only with responsible concessionaires.
- 44.02 The Concessionaire is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Concessionaire on this or other contracts which indicates that the Concessionaire is not responsible, the County may, in addition to other remedies

provided in the contract, debar the Concessionaire from bidding on County contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing contracts the Concessionaire may have with the County.

- 44.03 The County may debar a concessionaire if the Board of Supervisors find, in its discretion, that the Concessionaire has done any of the following: (1) violated any term of a contract with the County or a nonprofit corporation created by the County, (2) committed any act or omission which negatively reflects on the Concessionaire's quality, fitness or capacity to perform a contract with the County or any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity.
- 44.04 If there is evidence that the Concessionaire may be subject to debarment, the Department will notify the Concessionaire in writing of the evidence which is the basis for the proposed debarment and will advise the Concessionaire of the scheduled date for a debarment hearing before the Contractor Hearing Board.
- 44.05 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Concessionaire and/or the Concessionaire's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision , which shall contain a recommendation regarding whether the Concessionaire should be debarred, and, if so, the appropriate length of time of the debarment. If the Concessionaire fails to avail itself of the opportunity to submit evidence to the Contractor

Hearing Board, the Concessionaire may be deemed to have waived all rights of appeal.

44.06 A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Contractor Hearing Board.

44.07 Each and all of the provisions contained in Section 44 and any amendments thereto shall extend to and be binding upon any third party that provides services as authorized by this Agreement."

**8. CONCESSIONAIRE'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Within existing Paragraph 27 of the Agreement entitled "CONCESSIONAIRE'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM," the words "District Attorney" are deleted and replaced with "Child Support Services Department."

**9. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Within the existing Paragraph 28 of the Agreement entitled "TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM," the words "District Attorney," are deleted and replaced with "Child Support Services Department."

**10. CONCESSIONAIRE'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT COMPLIANCE ENFORCEMENT**

Within the existing Paragraph 29 of the Agreement entitled "CONCESSIONAIRE'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT COMPLIANCE ENFORCEMENT," the words "District Attorney" are deleted and replaced with "Child Support Services Department."

**11. SAFELY SURRENDERED BABY LAW**

Add paragraph 45 as follows:

**"45. CONCESSIONAIRE'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO THE SAFELY SURRENDERED BABY LAW**

The Concessionaire acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The Concessionaire understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position in the subcontractor's place of business. The County's Department of Children and Family Services will supply the Concessionaire with the poster to be used.

**12. RATIFICATION**

All other terms, conditions, covenants and promises of the Agreement not affected by this Amendment Number 1 shall remain in full force and effect and are hereby reaffirmed.

**13. EFFECTIVE DATE**

The effective date of this Amendment Number 1 shall be the date, month, and year first written above.

/

/

/

/

/

/

/

/

/

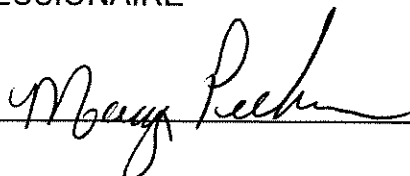
/

/

/

IN WITNESS WHEREOF, the Concessionaire has executed this Amendment Number 1 to Contract Number 72432, or caused it to be duly executed, and the County of Los Angeles, by order of its Board of Supervisors, has caused this Amendment to Contract Number 72432 to be executed on its behalf by the Chairman of said Board and attested by Executive Officer-Clerk of the Board thereof, the day and year first above written.

CONCESSIONAIRE

By 

COUNTY OF LOS ANGELES

By \_\_\_\_\_

Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS  
Executive Officer-Clerk of  
The Board of Supervisors

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
RAYMOND G. FORTNER, JR.  
County Counsel

By   
Principal Deputy